in law or in fact at all, notwithstanding the presence of the words "correctness, legality or propriety" in section 320 which deals with a different matter. Their Lordships express no opinion on this topic. It is sufficient for them to say that the argument would have been a legitimate one and had it been successful the court would have been just as powerless to increase the sentence under the revision sections as it was under the sections relating to appeal. It would not in their Lordships' view be right to dismiss the appeal on the assumption, which is fundamental in Mr. Gahan's argument, that the court could clearly have done in revision what it was not competent to it to do on appeal i.e. to increase a sentence without there being any error in law or in fact.

Their Lordships should add that they do not accept Mr. Page's contention that the case is not one where it can be said that the record came "to the knowledge of the Court" within the section 322. They consider that the requirements of the section in that respect were duly satisfied. They also make no reference to the Indian cases of *Kishan Singh v. The King-Emperor*[2] or *Sayyapureddi v. The King-Emperor*[3] cited by Mr. Page. In those cases the questions of want of jurisdiction were of a different character.

Their Lordships will humbly advise His Majesty that the appeal should be allowed.

Appeal allowed.

IN RE JOSEPH AARON ELIAS, DECD.

[Orig. Civ. Juris. (Murray-Aynsley, C. J.) March 23, 1950]
[Singapore — Originating Summons No. 67 of 1950]

Wills Ordinance — Specific gift — Whether gift takes effect.

In this Originating Summons the question raised was one of interpretation of the following clause in the Will of the deceased: "I give and bequeath all the jewellery diamonds precious stones and gold deposited with me in the Hongkong and Shanghai Banking Corporation's Branch Bank in Bombay unto my sisters, Mrs. D. J. Elias, Mrs. Esther Manasseh and Mrs. D. Frankel to be divided amongst them equally." At the time of the death of the deceased there were no goods of that description deposited in the bank.

Held, that the gift in this case was a specific gift and that the recipients were therefore entitled to the collection that was at one time in the bank in question and which were clearly identifiable.

Case referred to:—

(1) *In re Whitby* (1944) 1 All E. R. 299.

ORIGINATING SUMMONS.

C. H. Smith for the Trustees of the Will of J. A. Elias (decd.).

Sir Roland Braddell for Mrs. D. J. Elias.

S. H. D. Elias for nephews and nieces of the deceased.

Cur. Adv. Vult.

Murray-Aynsley, C. J. : — The present question is one of interpretation of the following clause in the will of the deceased :—

"5. I give and bequeath all the jewellery diamonds precious stones and gold deposited with me in The Hongkong & Shanghai Banking Corporation's Branch Bank in Bombay unto my sisters, Mrs. D. J. Elias, Mrs. Esther Manasseh and Mrs. D. Frankel to be divided amongst them equally."

At the time of the death of the deceased there were no goods of that description deposited in the bank.

Consideration of the local equivalent of section 24 of the Wills Act is necessary.

Owing to the particular rule of construction imposed by that section unless a contrary intention "shall appear by the will" the gift fails owing to the fact that at the time of the death of the deceased there was nothing that answered to the description in the will.

It has been decided and is, I think, well established that a specific gift in a will in every case shows a contrary intention.

I think, therefore, that the answer to the question must depend on whether there is anything in the will that shows that the gift in question is specific and not generic.

I think that the use of the definite article can be taken as indicating that the deceased was referring to a particular collection of jewellery, etc. and not to any goods of that description that might at any future time be in the bank.

In the recent case of *In re Whitby*[1], it would appear that the use of the word "now" might have had a similar effect. I think that such a *ratio decidendi* would have been sounder than that adopted by Lord Greene, the then Master of the Rolls. It is interesting to note that a similar interpretation in the past would have deprived All Souls of part of the Codrington Library.

In the circumstances I consider that the gift takes effect and the recipients are entitled to the collection that was at one time in the bank in question and which the affidavit shows to be clearly identifiable.

Order accordingly.

UNITED STATES OF AMERICA v. YANG SOON EE & ANOTHER.

[Orig. Civ. Juris. (Murray-Aynsley, C. J.) March 28, 1950]
[Singapore — Civil Suit No. 134 of 1950]

International Law — Claim against a ship in possession of persons who hold it on behalf of a Sovereign Government — Jurisdiction.

In this case the plaintiffs issued a writ against the defendants, the acting captain and third officer respectively of a ship known as "Hai Hsuan", claiming that

they were entitled to a sum of money secured by an hypothecation of the ship and that by virtue of the hypothecation they were entitled to possession of the ship. The plaintiffs obtained ex parte an injunction restraining the defendants from moving the ship. The defendants entered a conditional appearance and applied to have the writ and all subsequent proceedings set aside on the ground inter alia that the ship was the property and in possession of the Central People's Government of the People's Republic of China.

Held, that as on the facts it appeared that the defendants were holding the ship on behalf of the Central People's Government of the People's Republic of China, the ship must be held to be in the possession of the Government of China, a sovereign State, and therefore the Court had no jurisdiction in the matter.

Cases referred to :—

(1) *The Christina* (1938) A.C. 485.

(2) *The Jupiter* (1924) P. 236.

CIVIL SUIT.

C. H. Smith for the plaintiffs.

N. A. Mallal (*C. H. Koh* with him) for the defendants.

Cur. Adv. Vult.

Murray-Aynsley, C. J. : — In this case the plaintiffs issued a writ against the defendants who are acting captain and third officer respectively of a ship known as "Hai Hsuan". The plaintiffs claim that they are entitled to a sum of money secured by an hypothecation of the ship and that by virtue of that hypothecation they are entitled to possession of the ship. The plaintiffs obtained *ex parte* an injunction restraining the defendants from moving the said ship. The defendants entered a conditional appearance. The defendants now move to have the writ and all subsequent proceedings set aside on various grounds. The only ground which I have considered at this stage is the sixth, which reads as follows :—

"6. The said vessel is the property and in possession of The Central People's Government of the People's Republic of China, a foreign sovereign State recognized by His Majesty's Government and accordingly this Honourable Court has no jurisdiction to entertain the present suit."

By consent the parties agreed to be bound by certain answers given by the Foreign Office to the Supreme Court of Hong Kong. By those answers it is clear that "The Central People's Government of the People's Republic of China" is recognized both *de facto* and *de jure* as the only Government of China.

The ship is registered in Formosa, which is legally part of the Japanese Empire and not apparently *de facto* under the control of the recognized Government of China.

The defendants claim that the ship is the property of the present Government of China. They base this claim on two grounds, that it was part of the property of the former Government of China, and as such property would pass to the present Government from the moment of recognition. They also claim the property as the result of legislative act of the present Government.

It is admitted that the ship has not been at any material time within the territorial waters of China.

The defendants also claim that the present Government is in possession of the ship by reason of the fact that they, the defendants, are holding the ship on behalf of that Government.

I am not satisfied at the moment that the ship was the property of the former Government as distinct from a corporation wholly or almost wholly owned by that Government. I express no opinion as to the effect of legislation of the Government of China on the ownership of property outside China. On the ground of possession, I consider that the matter is concluded by the case of *The Christina*[1]. There a ship whilst absent from the territory of a state was the object of a decree of requisition by the Government of that state. Whilst the ship was in British territory the government of that state, apparently quite illegally, obtained possession of that ship by putting on board a crew that was willing to hold it on behalf of that government. The House of Lords affirmed a decision setting aside a writ and subsequent proceedings on the part of the owners on the ground that the possession was that of a sovereign State. The decision appears to be based entirely on the *de facto* possession by a crew in sympathy with the government and of the crew I suppose that only the sympathies of the captain were material. The learned Lords were, I take it, all of the opinion that the legality or otherwise of the acts which led to possession were immaterial. Further, I do not consider that the decision is any authority on the effect of requisition by a foreign state of property without its jurisdiction. Juristically requisition would be in the same position as confiscation for this purpose. The case of *The Jupiter*[2] was expressly approved.

This is enough to decide the present case except for one matter raised by Mr. Smith for the plaintiffs. That matter was the proposition that the immunity did not apply to merchant ships engaged in earning freight. It is true that three Lords reserved their opinion on that point in *The Christina*. If they had any serious doubts on that point they might have applied them, because the "Christina" was a commercial ship seized in the course of a commercial voyage and which the government concerned had no opportunity of using for any other purpose, and there the supposition that it was intended to use the ship for any other purpose

is only based on conjecture. The reasoning on which all the cases have been decided does not logically leave room for any exception of this kind. If this result is inconvenient it can only be obviated by statute.

I think that the result would be the same in the case of any other kind of property and does not depend on the fact that the property in question is a ship and does not depend on the form of procedure adopted by the plaintiffs. The only relevant consideration is the fact that if these proceedings were successful they would have the effect of depriving the present Government of China of possession.

The writ and subsequent proceedings must be set aside with costs.

Order accordingly.

IN RE ABRAHAM PENHAS DECEASED.

[Court of Appeal (Murray-Aynsley, C.J., Laville and Evans JJ.) March 24, 1950]

[Singapore — Civil Appeal No. 21 of 1949]

Marriage — Validity of marriage of a Jew to a non-Christian Chinese lady — Requirements for the validity of marriage under the Common Law — Whether validity of marriage affected by personal disability of a Jew to marry a woman who was not a Jewess.

This was an appeal from the judgment of Mr. Justice Gordon-Smith (reported in (1949) M. L. J. 223). The learned trial Judge had found that the respondent, Tan Soo Eng, had gone through a form of marriage with the deceased, Abraham Penhas, and he held that the respondent was the lawful widow of the deceased. The appellant, Isaac Penhas, appealed and on appeal the questions raised were (a) whether the ceremony that took place was sufficient to create a valid marriage and (b) whether either or both of the parties was under any disability which prevented them from contracting a valid marriage.

Held, (a) that according to the English Common Law which applied in the Colony, the agreement **per verba de praesenti** of the parties to a marriage were sufficient in the absence of impediment to constitute a valid marriage; (b) that the evidence in this case showed that the marriage ceremony gone through conformed to the requirements of the Common Law and therefore the marriage was a valid marriage under the Common Law; and (c) that the marriage being valid under the Common Law was not rendered invalid by the personal disability of the deceased as a follower of the Jewish religion to marry a woman who was a non-Jewess.

Cases referred to :—

(1) *Reg. v. Millis* 10 Cl. & Fin. 534.
(2) *Wolfenden v. Wolfenden* (1946) P. 61.
(3) *Apt v. Apt* (1948) P. 86.
(4) *Srini Vasan (otherwise Clayton) v. Srini Vasan* (1945) P. 67.
(5) *Nachimson v. Nachimson* (1930) P. 217.
(6) *Hyde v. Hyde and Woodmansee* L.R. 1 P. & D. 130.
(7) *Choa Choon Neoh v. Spottiswoode* 1 Kyshe 216.
(8) *Ussher v. Ussher* (1912) 2 Ir. R. 445.
(9) *Khoo Hooi Loong v. Khoo Hean Kwee* (1926) A.C. 529 at p. 543.
(10) *Chetti v. Chetti.* (1909) P. 67.
(11) *Berthiaume v. Dastous* (1930) A.C. 83.
(12) *Maclean v. Cristall* 7 Notes of Cases, Supp. xvii.
(13) *Reg. v. Willans* 3 Kyshe 16.
(14) *Carolis de Silva v. Tim Kim* (1905) 9 S.S.L.R. 8.
(15) *Sunny Tay v. Seow See Neo* (1934) S.S.L.R. 88; (1934) M.L.J. 83.
(16) *Chia Teck Leong and Others v. Estate and Trust Agencies (1927) Ltd.* (1939) S.S. L.R. 94; (1939) M.L.J. 118.
(17) *Case of the Postnati* 2 State Tr. 559 at p. 638.
(18) *Blankard v. Galdy* 2 Salk. 411.
(19) *Campbell v. Hall* 20 State Tr. 239.
(20) *Braddell's Law of the Straits Settlements Vol. 1.*
(21) 1 Kyshe xviii.
(22) *In re Wilton* (1900) 2 Ch. 481.
(23) *Lautour v. Teesdale* 8 Taunton 830.
(24) *Petronella Case* (1926) A.C. 543.
(25) *Blackstone's Commentaries* Vol. 1 at p. 107.
(26) *Cooper v. Stuart* 14 App. Cas. 286.
(27) *Catterall v. Catterall* 1 Rob. 580.
(28) *Advocate General of Bengal v. Ranee Surnomoye Dossee* 2 Moo. P.C.C., N.S. 22.
(29) *Narayana v. Kannamma* A.I.R. 1932 Mad. 445.

CIVIL APPEAL from Judgment of Gordon-Smith, J.

John Laycock (*D. Murphy* with him) for the appellant.

Sir Roland Braddell (*Claude da Silva* and *G.E.N. Oehlers* with him) for the respondent.

Murray-Aynsley, C. J. : — In this case the facts lie within a small compass. There is a finding of fact that the respondent Tan Soo Eng went through a ceremony of marriage with the deceased Abraham Penhas. There is no attempt by the appellant to upset this finding of fact. All that this Court had to consider was whether the ceremony was sufficient to create a valid marriage, and secondly, if this were the case, whether either or both of the parties was under any disability which prevented them from contracting a valid marriage.